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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	No. 4:15-cr-6049-EFS-16
Plaintiff,)	
)	SENTENCING
vs.)	MEMORANDUM OF EDGAR
)	OMAR HERRERA FARIAS
EDGAR OMAR HERRERA FARIAS,)	AND MOTION FOR
)	DOWNWARD DEPARTURE
Defendant.)	AND/OR VARIANCE
)	
)	

The Defendant, EDGAR OMAR HERRER FARIAS, by counsel, presents the following Sentencing Memorandum and Motion for Downward Departure and/or Variance.

I. BASE LEVEL OFFENSE AND ENHANCEMENTS

Edgar Omar Herrera Farias submits that his should be based upon the controlled substances he was actually found to be in possession of on March 22, 2012, to wit, 211.3 grams of methamphetamine. PSIR at ¶ 27. No reliable evidence exists to support any greater amount. See Mr. Herrera Farias's Objections to PSIR at Objection No. 7.

1 This constitutes the provable scope of Mr. Herrera Farias' agreement.
2 1B1.3(a)(1)(B)(i).

3 Mr. Herrera Farias should receive a 3-level downward adjustment under
4 U.S.S.G. 2X1.1(b)(2) because this is a conspiracy under 18 U.S.C. § 371. See
5 Defendant's PSIR Objections No. 1 and 8.
6

7 Mr. Herrera Farias should receive a two-level downward adjustment for
8 acceptance of responsibility. U.S.S.G. 3E1.1(a). See PSIR at ¶'s 105, 106 and 117.
9

10 These resulting in an adjusted offense level of 21.
11

12 Mr. Herrera Farias should receive one criminal history point for a misdemeanor
13 theft conviction in 2012. PSIR at ¶ 123. This puts Mr. Herrera Farias in Criminal
14 History Category I.
15

16 This results in a standard sentencing range of 37 to 46 months.
17

18 II. 18 U.S.S.G. § 3553(a) FACTORS.

19 A. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE

20 The overall case involves a large conspiracy in which Mr. Herrera Farias is a bit
21 player. Even if the cooperating co-conspirators are to be believed, Mr. Herrera Farias'
22 involvement was after the arrest of Ivan Cavillo in April 2012 until he was deported.
23 Mr. Herrera Farias was arrested on March 22, 2012 in Yakima County for possession
24 of methamphetamine. He spent the next 47 days in jail. On October 12, 2012 he started
25 home confinement on GPS monitoring to complete a three-month sentence. See Felony
26

Judgment and Sentence attached to the Defendant's Objections to PSIR, ECF No. 1144. Mr. Herrera Farias was arrested on an immigration hold on December 3, 2012 and thereafter deported on March 27, 2013. PSIR ¶ 138. If the cooperating co-conspirators are believed, he ended his role in the conspiracy with his December 3, 2012 arrest. His tenure as the local boss would start with him in jail and be interrupted by his home confinement. It makes the assertions of the cooperating co-conspirators improbable and unlikely. A co-conspirator's statements inculcating another defendant are inherently unreliable and may adopt facts the Government wants to hear in order to curry favor for some benefit, e.g., a lesser sentence. *United States v. Vera*, 893 F.3d 689, 692-93 (9th Cir. 2018).

B. THE HISTORY AND CIRCUMSTANCES OF THE DEFENDANT

Edgar Omar Herrera Farias was born in Mexico and raised in Michoacán. He came to the United States and had a green card until his arrest in Yakima County in 2012.

Mr. Herrera Farias has a son, age 3, who resides in Mexico, though his son was born in the United States and his mother has legal permanent residence status. Mr. Herrera Farias maintains telephone contact with them. Missing out of being with his son growing up causes Mr. Herrera Farias the most distress and causes depression. Mr. Herrera Farias' greatest wish is to be reunited with his son and family.

Mr. Herrera Farias completed high school from 2014 to 2016. See Defendant's

1 Sentencing Exhibits ECF No. 1142, Exhibit 16012 (school enrollment documents dated
2 August 28, 2014, May 22, 2015 and March 26, 2016). Notably, his school attendance
3 in Mexico coincides with the time period that Jese David Carillo Casillas and the other
4 co-conspirators were most active. See generally, the Offense Conduct section of the
5 PSIR.
6

7
8 C. THE NEED TO AVOID UNWARRANTED SENTENCING DISPARITIES

9 18 U.S.C. 3553(a)(6)

10 The Court should avoid sentencing disparities. Here, the lead defendant, Jese
11 Carillo Casillas was sentenced to 300 months imprisonment. PSIR at ¶5. His
12 involvement in the conspiracy to distribute controlled substances and money laundering
13 over shadows any involvement by Mr. Herrera Farias. See generally Carillo Casillas
14 Sentencing Transcript, ECF No. 1114.
15
16

17 Mr. Carillo Casillas' misdeeds include the seizure from him of 10 kilos of the
18 extremely dangerous narcotic fentanyl (*Id.*, at 35) being the head of a large drug
19 trafficking organization (*Id.*, at 49) including the delivery of multiple drugs including
20 10 kilos of heroin for \$660,000.00 (PSIR at ¶'s 86-89) and being "a central figure in
21 the money laundering of huge amounts of money." (ECF No. 1114 at 48).
22
23

24 Mr. Herrera Farias' involvement pales in comparison. There is no evidence that
25 Mr. Herrera Farias was ever involved in money laundering.
26

Francisco Duarte Figueroa, defendant No. 6, was sentenced to 120 months

1 imprisonment. PSIR at ¶ 8. He delivered 10 kilos of heroin to an undercover officer
2 on August 15, 2010 at the agreed price of \$660,000.00. PSIR at ¶ 87-90.

3 Gabriela Mendoza Vasquez, defendant No. 7, was sentenced to 30 months
4 imprisonment. PSIR at ¶9. Ms. Mendoza Vasquez is one of Ivan Calvillo's wives.
5 Officers in April 2012 recovered 20 kilos of cocaine behind the seat of a car where Ms.
6 Mendoza Vasquez and her child were sitting. PSIR at ¶ 28. Ms. Mendoza Vasquez
7 was wired \$5,000.00 from a \$326,470.00 Canadian money drop Mr. Calvillo arranged
8 on October 27, 2014. *Id.*, at ¶ 39. When Mr. Calvillo discussed drug trafficking and
9 money laundering with an undercover RCMP officers on January 29, 2016, Ms.
10 Mendoza Vasquez told the officers she used to these discussions. *Id.*, ¶ 67-69.

11
12 Julio Cesar Rosales Saucedo, defendant No. 9, was sentenced to 87 months
13 imprisonment. PSIR at ¶ 10. Mr. Rosales Saucedo was involved in both drug
14 trafficking and money laundering including delivering \$244,240.00 to an undercover
15 officer to be laundered. PSIR at ¶ 76. Also see ¶'s 61 and 71.

16
17 All of the above co-defendants were charged in Count 1 with the drug conspiracy,
18 Count 2 money laundering (except Mr. Duarte Figueroa) and one or more substantive
19 Counts. PSIR at ¶'s 8-9. Mr. Herrera Farias was only charged in Count 1.

20 21 22 23 24 25 26 III. DEPARTURE AND VARIANCE

If the Court rejects Mr. Herrera Farias' contention that he plead guilty to an 18
U.S.C. § 371 conspiracy, he makes the following motion for downward departure

and/or variance.

The starting point of this analysis is that Mr. Herrera Farias faces a minimum mandatory 10-year sentence. 21 U.S.C. §841(b)(1)(A). A significant punishment that will reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence and protect the public. 18 U.S.C. § 3553(a)(2)(A), (B) and (C).

Edgar Omar Herrera Farias moves the Court for a downward departure and/or variance for the following reasons:

1) To Avoid Unwarranted Sentencing Disparities Among the Defendants in this Case. This is explained in section II.C above.

2) Mr. Herrera Farias was Neither an Organizer, Leader, Manager or Supervisor under U.S.S.G. § 3B1.1. Even if the conduct is found to be encompassed as a manager or supervisor, his was short lived and the evidence supporting it is questionable. See Objection No. 9 to PSIR, ECF No. 1143. Moreover, not having this sentence enhancement apply is one of two sentencing concessions that the Government agreed to for Mr. Herrera Farias to plead guilty. The other being allowing two levels off for acceptance of responsibility.

3) The Defendant's Criminal History is Over-Stated in the PSIR. Mr. Herrera Farias is receiving two criminal history points for his 2012 Yakima County conviction for possession of methamphetamine. PSIR at ¶ 137. This conduct also is

1 counted in determining his relevant conduct to determine his offense level in this case.
2 Therefore, the same conduct is being counted twice to aggravate his sentence range,
3 notwithstanding his three months sentence he served for the Yakima County conviction.
4 Likewise, this Yakima County conviction was used as the basis for revoking a deferral
5 on the misdemeanor of a theft charge for which he received one criminal history point
6 and also as the basis for adding two points from the resulting probation. PSIR at ¶'s
7 123 and 134. So again, the relevant conduct of the Yakima County conviction is double
8 counted to raise his offense level and to give him three criminal history points, which
9 aggravates his sentence.
10
11
12

13 Therefore, it is prayed that the Court grant Mr. Herrera Farias a sentencing
14 departure and/or variance.
15

16 RESPECTFULLY submitted this 22 day of February 2019.

17 WALDO, SCHWEDA
18 & MONTGOMERY, P.S.
19 By: /s/ Peter S. Schweda
20 PETER S. SCHWEDA
21 Attorney for Defendant Herrera Farias
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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